IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2007

CORAM

THE HONOURABLE MR. A.P.SHAH, THE CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

Writ Petition No.34217 of 2007

V.Anil Kumar ... Petitioner

vs

The State of Tamilnadu rep. By its
Chief Secretary to Government,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009. ... Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, for the relief as stated therein.

For Petitioner : Mr.S.R.Rajagopal

For Respondent : Mr.P.Raja Kalifulla,
Government Pleader

O R D E R

(Order of the Court was made by V.RAMASUBRAMANIAN,J.)

The petitioner, who is a practising Advocate, has come up with the present writ petition pro bono, seeking the issue of a writ of Mandamus to direct the respondent-State Government, to issue necessary Notification under Section 27(2) of the Consumer Protection Act, 1986, conferring powers upon the District Consumer Disputes Redressal Forums and the State Consumer Disputes Redressal Commission, in the State of Tamilnadu, to be the Judicial Magistrates of First Class, for the purpose of various provisions of the Code of Criminal Procedure,1973.

2. We have heard Mr.S.R.Rajagopalan, learned counsel for the petitioner and Mr.P.Raja Khalifulla, learned Government Pleader for the respondent.

3. In brief, the grievance of the petitioner is that whenever the orders of the District Forums or the State Commission, are sought to be enforced by invoking section 27 (2) of the Consumer Protection Act,1986, the Police is refusing to execute the warrants of arrest issued by these Forums/Commission, on the ground that the Forum/Commission constituted under the Act have not been notified as

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Judicial Magistrates of First Class. It is the contention of the petitioner that though Section 27(2) of the Consumer Protection Act, 1986, as inserted by the Consumer Protection (Amendment) Act, 2002, with effect from 15.03.2003, conferred upon the District Forums, the State Commissions and the National Commission, the powers of a Judicial Magistrate of First Class, a Notification under Section 11 read with Section 32 of the Code of Criminal Procedure is necessary, to enable these Forums and State Commission to exercise such powers of a Judicial Magistrate. On account of the State Government not issuing any such Notification under Section 11 read with section 32 of the Code of Criminal Procedure, the District Forums and the State Commission, according to the petitioner, could not effectively exercise the powers of a Judicial Magistrate. Therefore, the petitioner has come up with the present writ petition seeking a direction to the State Government to issue a Notification as prescribed under the Code of Criminal Procedure, so as to make Section 27(2) of the Consumer Protection Act, workable.

4. In order to find an answer to the issue raised by the petitioner, it is necessary to peep into the Legislative history of the Consumer Protection Act, 1986, and the mechanism provided under the Act for the redressal of the grievances of the consumers and also look into the various provisions of the Code of Criminal Procedure, 1973.

5. The United Nations General Assembly adopted a Resolution bearing No.39/248 on 09.04.1985 providing a broad framework for the protection of the consumers. Since India is the signatory to the said Resolution, the Parliament enacted the Consumer Protection Act, 1986. The Act is divided into 4 chapters. Chapter-I of the Act contains the short title, extent, commencement and application of the Act, the definitions and the availability of the Act as an additional remedial measure. Chapter-II of the Act provides for the establishment of Central, State and District Consumer Protection Councils. Chapter-III of the Act contains Provisions, for the establishment of a three tier mechanism for the redressal of grievances of the consumers, their jurisdiction and powers, limitation and enforcement of orders of the various Forums constituted under the Act. Chapter-IV of the Act contains miscellaneous provisions.

6. A close scrutiny of the Provisions of Sections 9 to 27-A of the Act, which, together constitute Chapter-III of the Act, shows that they provide for the following:-

(a) The establishment of a District Forum in each District of the State by a Notification, the establishment of a State Commission in every State by a Notification and the establishment of a National Commission by the Central Government by a Notification;

(b) The composition of the District Forums, State Commissions and National Commission;

(c) The jurisdiction of the District Forums, State Commissions and National Commission;

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(d) The manner of filing complaints, appeals and revisions;

(e) The procedure to be adopted in the disposal of the complaints, appeals or revisions;

(f) The limitation for preferring a complaint or appeal;

(g) The power to set aside exparte orders and to transfer cases;

(h) The power of enforcement of the orders of the District Forums, State Commissions and National Commission and

(i) The power to impose penalties for non compliance with the orders.

7. Thus, the Act is apparently a self-contained Code, since it contains provisions both for the adjudication of disputes as well as for enforcement of the orders, apart from providing appellate and revisional remedies. In other words, the Act does not require any extraneous aid to infuse life or to make any of its provisions workable. It is in the light of this fact that the question raised in the present writ petition has to be analysed.

8. Section 27 of the Consumer Protection Act, as it originally stood, empowered the District Forums, State Commissions and the National Commission to punish a person against whom an order is issued, if he fails or omits to comply with the order. In the first instance, Section 27 contemplated the punishment, of only a person against whom a complaint was made and who suffered an order. But, under the Amendment Act No. 50 of 1993, which provided for the dismissal of frivolous or vexatious complaints with exemplary costs, Section 27 was amended to make even the complainant liable for punishment if he fails to comply with any order of the District Forum, State Commission and National Commission.

9. Section 27 underwent a sea change, with the advent of the Consumer Protection (Amendment) Act, 2002, with effect from 15.03.2003. Before the coming into force of this amendment, Section 27 merely provided for the award of the punishment of imprisonment or fine or both, for failure to comply with the orders of the various Fora. No Magisterial powers were conferred upon the Fora constituted under the Act, before the Amendment Act 62 of 2002. It is only by the Amendment Act 62 of 2002 that Section 27 was redrafted and arranged into three sub-sections, with sub-sections (2) and (3) conferring Magisterial powers and also providing for the trial of a person, who violated the orders of the various Fora, as though an offence had been committed under the Act. Section 27, after its amendment under Act 62 of 2002, reads as follows:-

> "27.Penalties.- (1) Where a trader or a person against whom a complaint is made (or the complainant) fails or omits to comply with any order made by the District Forum, the State Commission or the National

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Commission, as the case may be, such trader or person (or complainant) shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1973), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973.

(3) All the offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be."

10. Since the non compliance with an order passed by the District Forum, State Commission or National Commission, is to be tried summarily as an offence under the Act, by the District Forum, State Commission or the National Commission, exercising Magisterial powers, a regular remedy of appeal is also provided under Section 27-A of the Act, by the very same amendment. Section 27 A reads as follows:-

"27 A. Appeal against order passed under Section 27.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an appeal under Section 27, both on facts and on law, shall lie from:

(a) the order made by the District Forum to the State Commission;

(c) the order made by the State Commission to the National Commission and

(e) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any Court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this Section shall be preferred within a period of thirty days from

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the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission:

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if , is satisfied that the Appellant had sufficient cause for not preferring the appeal within the period of thirty days.

11. Thus, what was originally a simple provision for punishment, for non compliance with an order, got translated into a provision for punishment of an offence, by the Amendment Act 62 of 2002. In other words, the provisions of Section 27, before the said amendment, were akin to the provisions of Order XXXIX, Rule 2A of the Code of Civil Procedure or the provisions of the Contempt of Courts Act, 1971 or section 51(c) read with Order XXI, Rule 37, C.P.C. But those simple powers of execution, got enlarged by the Amendment Act 62 of 2002, with effect from 15.03.2003. It is in the context of such a development that we have to see whether the Magisterial power conferred under Section 27(2) of the Act, would become operative only after a Notification is issued by the State Government in accordance with the provisions of the Code of Criminal Procedure.

12. As a matter of fact, before the Amendment Act 62 of 2002 came into force, a question arose in State of Karnataka -vs- Viswabharathi House Building Co-operative Society and others (2003) 2 Supreme Court Cases 412, as to whether a District Forum is obliged to transmit an order passed by it, to a civil court for execution, under section 25 of the Act. The constitutional validity of the Consumer Protection Act was actually under challenge in the said case and the scope of section 25 was considered by the Apex court incidentally. After agreeing with the judgment of the Karnataka High Court upholding the validity of the Act, the Supreme Court considered the issue of enforceability and execution of the orders of the Forums and held in Paragraph No.59 to 63 of the said decision as follows:-

"59. It is well settled that the cardinal principle of interpretation of statute is that Courts or tribunals must be held to possess power to execute their own order.

60. It is also well settled that a statutory tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order. Further, the Act which is a self-contained Code, even if it has not been specifically spelt out, must be deemed to have conferred upon the Tribunal all powers in order to make its order effective.

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61. In Savitri v. Govind Singh Rawat (1985 4 SCC 337:1985 SCC (Cri) 556 : AIR 1986 SC 984, it has been held as follows:

> "Every Court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim 'ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest (where anything is conceded, there is conceded also anything without which the thing itself cannot exist). (Vide Earl Jowitt's Dictionary of English Law, 1959 Edn., p.1797) Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties".

62. In Arabinda Das -vs- State of Assam (AIR 1981 Gau 18 (FB), it has been held as follows:-

> " We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt in the statute. Where the rule-making authority gives power to certain authority to do anything of public character, such authority should get the power to take intermediate steps in order to give

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> effect to the exercise of the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule-making authority.
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> .... In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers power on the authority in its exercise of such power."
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> 63. The terminology used in Section 25 of the Act to the effect "in the event of its inability to execute it", is of great significance. Section 25, on a plain reading, goes to show that the provision contained therein presuppose that the Forum or the Commission would be entitled to execute its order. It, however, may send the matter for its execution to a court only in the event it is unable to do so. Such a contingency may arise only in a given situation but in our considered opinion the same does not lead to the conclusion that the Consumer Courts cannot execute its own order and by compulsion it has to send all its orders for execution to the civil courts. Such construction of Section 25 in our opinion would violate the plain language used therein and, thus, must be held to be untenable."

13. Though the aforesaid decision of the Apex court was delivered in January 2003, before the coming into force of the Amendment Act 62 of 2002 (with effect from 15-3-2003) and it did not deal with section 27(2) of the Act, the decision settles 2 fundamental issues of law in unequivocal terms. They are (i) that the Consumer Protection Act is a self contained code which could provide complete and final relief to a litigant without driving him to other Forums or Tribunals or courts, for implementation of its orders; and (ii) that every Tribunal clothed with the power to adjudicate a dispute must be deemed to have been conferred with the powers to make its orders effective and enforceable. Therefore, section 27(2) has to be read and understood in such a manner as to be in tune with the fundamental principles laid down by the Apex Court in the aforesaid decision.

14. Coming to the relevant provisions of the Code of Criminal Procedure, 1973, it is seen that Section 6 of the Code provides for the establishment of four classes of criminal Courts in every State (apart from the High Courts and the Courts constituted under any law

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other than the Code). These four classes of Criminal Courts are:

i.Courts of Sessions;

iii.Judicial Magistrates of First Class / Metropolitan Magistrates in Metropolitan Area;

v.Judicial Magistrates of Second Class and

vii.Executive Magistrates.

The establishment of these 4 classes of criminal courts, the appointment of Judges/Presiding Officers for these courts and conferment of powers on them, are dealt with, by sections 9 to 21 of the Code.

15. While Section 9 of the Code deals with the establishment of a Court of Session in every Sessions Division and the appointment of Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges, Section 11 deals with the appointment of Judicial Magistrates of First Class and Second Class in every District other than the Metropolitan areas and the appointment of Presiding Officers for such Courts. Section 12 deals with the appointment of Chief Judicial Magistrates and Additional Chief Judicial Magistrates and Section 13 deals with the conferment of powers of Special Judicial Magistrates in respect of a particular case or classes of cases or in respect of any local area. Section 16 deals with the establishment of Courts of Metropolitan Magistrates and the appointment of Presiding Officers to such Courts. Section 17 deals with the appointment of Chief Metropolitan Magistrates and Additional Chief Metropolitan Magistrates and Section 18 deals with the conferment of powers of Special Metropolitan Magistrates for trying particular cases or classes of cases in Metropolitan areas. Similarly Section 20 deals with the appointment of Executive Magistrates and District Magistrates.

16. Thus it is seen that Sections 9 to 18 of the Code of Criminal Procedure deal with three things, viz.,

(i) the establishment of Courts (courts of Session or Courts of Judicial Magistrates or courts of Metropolitan Magistrates);

(ii) the appointment of Judges/Presiding Officers/Magistrates; and

(iii) the conferment of such powers on other persons.

This can be deduced easily from the uniformity of pattern in the language employed in all these sections. In particular, it is seen that Sections 9(1), 11(1) and 16(1) respectively empower the State Government--

(i) to establish a Court of Session for every Sessions Division;

(ii)to establish Courts of Judicial Magistrates in every District and

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(iii)Courts of Metropolitan Magistrates in Metropolitan areas. These provisions make it clear that the power to establish Courts of Session or Courts of Judicial Magistrates or Courts of Metropolitan Magistrates, is vested with the State Government and the State Government is obliged to establish Courts of Judicial Magistrates and Metropolitan Magistrates in consultation with the High Court, by way of Notifications. There is a striking resemblance between Sections 11 and 16, while Section 9 stands on a different footing. Section 9(1) mandates the State Government to establish a Court of Session and this mandate is not circumscribed by any prerequisites. On the contrary, Sections 11(1) and 16(1) mandate the State Government to establish Courts of Judicial Magistrates and Courts of Metropolitan Magistrates and this mandate is circumscribed by two prerequisites viz.,

(i) that it shall be done by the State Government after consultation with the High Court and

(ii) that such establishment shall be done by a Notification issued by the State Government.

17. Though Sections 9(1), 11(1) and 16(1) empower the State Government to establish Courts of Sessions/ Courts of Judicial Magistrates/ Courts of Metropolitan Magistrates, the power of appointment of Judges, Presiding Officers and Magistrates to these Courts is conferred only upon the High Court, under the respective sub Section (2) of each of these Sections 9, 11 and 16. The power of appointment of a Judge to a Court of Session is conferred upon the High Court by Section 9(2). Similarly, Sections 11(2) and 16(2) empower only the High Court to appoint Presiding Officers for Courts of Judicial Magistrates and Metropolitan Magistrates.

18. Section 11(3) goes one step further by empowering the High Court to confer powers of a Judicial Magistrate upon any particular member of the Judicial Services of the State functioning as a Judge in a Civil Court. Similarly, Sections 13(1) and 18(1) enable the High Court to confer the powers of a Judicial Magistrate or Metropolitan Magistrate, as the case may be, upon any person, in respect of particular cases or classes of cases in any local area if so requested by the Central or State Government. Therefore, it is clear that the Code creates a dichotomy between the establishment of courts on the one hand and the appointment of Presiding Officers and conferment of powers of such courts upon officers, on the other hand. While the power (nay, obligation) to establish courts is vested with the Government, the power to appoint and the right to confer powers upon them are vested in the High Courts.

19. In this context it is useful to extract the provisions of sections 11 and 32 of the Code, which read as follows:-

> "Section 11. Courts of Judicial Magistrates.-
> (1) In every district (not being a metropolitan area), there shall be established as many Courts of judicial Magistrates of the first class and of the second class, and at such place, as the State Government may,

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after consultation with the High Court, by notification, specify:

[Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or the second class to try any particular case or particular class or cases, and where any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.]

(2) The presiding officers of such Courts shall be appointed by the High Court.

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court."

Section 32. Mode of conferring powers.-

(1) In conferring powers under this Code, the High Court, or the State Government, as the case may be, may, by order, empower persons especially by name or in virtue of their offices or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered."

20. Thus, the scheme of Code makes it clear that the obligation to establish a Court of Session or Court of Judicial Magistrate or Court of Metropolitan Magistrate is cast upon the State Government and the power of appointment of Presiding Officers and conferment of powers upon other persons, vest only with the High Court. Once this scheme of the Code is understood, it will be easy to find out whether a Notification by the State Government is necessary to enable the various Fora constituted under the Consumer Protection Act to exercise the powers of Judicial Magistrate.

21. The doubt as to whether a Notification by the State Government is necessary under Section 32(1) read with 11(1) of the Code, to enable the Consumer Forum to exercise the powers of the Judicial Magistrate, has arisen, on account of a judgment of the Division Bench of this Court in Geetha and others -vs- Arunakumari

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2007 (4) C.T.C. 514. In the said case, the Principal Sessions Court, Chennai, ordered the transfer of a case pending on the file of the Additional Chief Metropolitan Magistrate to the file of the Mahila Court, Chennai. Two Mahila Courts were constituted by the State Government, by a Notification issued in G.O.Ms.No.556 dated 28.06.2002. The High Court appointed Judicial Officers to those Mahila Courts by Notifications issued in exercise of the powers conferred under Section 9(2) and 16(2) of the Code of Criminal Procedure. The challenge made to the transfer of the case from the file of the Additional Chief Metropolitan Magistrate to the file of the Mahila Court, Chennai was upheld by the Division Bench on the ground that the State Government had not established the Mahila Courts as Courts of Judicial Magistrate or Metropolitan Magistrate as required by Section 11(1) or 16(1). Therefore, the Division Bench found that the appointment of Presiding Officers and the conferment of powers by the High Court under Sub-Section (2) of Sections 11 and 16 respectively, were without fulfilment of the basic requirement under sub-section (1) of these sections, to establish a Magistrate Court, in the first instance. Paragraph Nos.7 and 8 of the said judgment read as follows:-

> "7. A perusal of the aforesaid Section clearly indicates that the power to establish a Court of Judicial Magistrate of First Class and of the Second Class is vested with the State Government and the State Government is required to exercise such power after consultation with the High Court. Once such Court of Judicial Magistrate is established by the State Government by Notification, under Section 11(2) the Presiding Officer of such Court is to be appointed by the High Court.
>
> 8. The Notification issued by the State Government clearly indicates that Mahila Court is constituted to be headed by District and Sessions Judge. The Notification issued by the State Government does not purport to establish any Court of the Judicial Magistrate of First Class. The power of the High Court to appoint Presiding Officer of such Court of Judicial Magistrate of the First Class under sub-section (2) of Section 11 can be exercised only when there is establishment of Judicial Magistrate of the First Class by the State Government. Therefore, apparently the notification issued by the High Court purporting to exercise power under Section 11(2) appears to be inappropriate. However, Section 11(3) of the Code empowers the High Court, whenever it appears to it to be expedient or necessary to confer the powers of a Judicial Magistrate of the First

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Class on any member of the Judicial Service functioning as a Judge in a Civil Court. Even the power under Section 11(3) could not have been exercised because, in the present case, Smt.S.Kalavathy has been posted to be the Sessions Judge in Coimbatore Sessions Division with Head Quarters at Coimbatore. Section 11(3) specifically contemplates the conferment of powers of Judicial Magistrate of First Class on any member of the Judicial Service functioning as a Judge in a Civil Court. It cannot be said that Smt. S.Kalavathy, who was posted as a Sessions Judge, was functioning a Judge in a Civil Court. Therefore, such Notification appears to be inappropriate."

22. However, the aforesaid decision may not apply to the case on hand. In the aforesaid decision, the State Government established a Court of Sessions and not a Court of Judicial Magistrate/Metropolitan Magistrate. Therefore, the Division Bench came to the conclusion that the question of appointment of Presiding Officers to such courts and conferment of powers of the Judicial Magistrate upon such Courts did not arise, especially when the State government had not established a court of Judicial Magistrate/ Metropolitan Magistrate.

23. But in the case on hand, the District Consumer Forum and the State Consumer Commission have already been constituted by necessary Notifications issued by the State Government under Section 9 (a) and (b) of the Consumer Protection Act, 1986. Thus, the Consumer Forums have been duly established by the State Government by necessary Notifications. After such establishment, the powers of a Judicial Magistrate have been conferred upon them by the statute itself under Section 27(2) of the Act. Therefore, the question of the State Government issuing a second Notification either under Section 11(1) or under Section 16(1) or under Section 32(1) of the Code of Criminal Procedure does not arise. To hold that a notification by the State Government under section 11(1) or 16(1) or 32(1) of the Code is necessary, to enable the Forums to exercise Magisterial powers, would tantamount to the imposition of an artificial restriction that a Consumer Forum has to be constituted by 2 notifications, one under section 9 of the Consumer Protection Act and another under section 32 of the Code of Criminal Procedure. This could never have been the intention of the legislature, when Amendment Act 62 of 2002 was passed, conferring magisterial powers upon the Consumer Forums.

24. More over, Section 27(2) of the Consumer Protection Act, opens with, "non-obstante clause". The section confers powers of a Judicial Magistrate of First Class upon the Consumer Forums, "notwithstanding anything contained in the Code of Criminal Procedure, 1973". Therefore, there is no need for the Consumer Forums to look forward to a Notification from the State Government for exercising those powers, when the statute has clothed these Forums with such powers by operation of law.

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25. The purport of section 27(2) of the Consumer Protection Act, is to create a legal fiction. This is made clear by the use of the expression "shall be deemed to be a Judicial Magistrate of First Class for the purpose of the Code of Criminal Procedure". No Court of a Judicial Magistrate is sought to be established afresh, by section 27(2). As seen from the earlier discussion, a notification under section 11(1) of the Code may be necessary for establishing a new Court of Judicial Magistrate in an area other than a metropolitan area. But such a notification is not necessary when an Act of Parliament confers powers upon an existing Forum, by a deeming provision.

26. The above legal position could be easily understood, if we look at similar provisions under other enactments such as The Family Courts Act,1984. Section 7 (2) of the said Act confers upon the Family courts constituted under the Act, the powers of a Magistrate under Chapter IX of the Code of Criminal Procedure. No Notification appears to have been issued by the State Governments under section 11(1) or 16 (1) of the Code to constitute these Family Courts, as Courts of Judicial Magistrates. Therefore it is clear that when the Statute confers certain powers upon an existing Forum, the powers so conferred get activated instantaneously, unless a contrary intention appears from the Statute itself.

27. The legal position that the Consumer Forums need not look forward to the High Court or the State Government, to issue any notifications, to enable them to exercise the powers under Section 27 (2), has been clarified by the National Commission, by a letter dated 27.05.2003. The relevant portion of the said letter, issued by Justice D.P.Wadhwa (retired Judge of the Supreme Court) as President of the National Commission, reads as follows:-

> "Re.Section 27: Sub Section (1) creates no difficulty. Sub-section (2) has to be read as under:-
>
> Power of Judicial Magistrate of the first class for trial of offences under the Act conferred as first portion of this sub-section says 'that notwithstanding anything contained in the Code of Criminal Procedure" a forum shall have the power of Judicial Magistrate of the first class. These powers thus immediately stand conferred and we have not to go either to High Court or State Government. When powers of a Judicial Magistrate of first class, as provided in the Code of Criminal Procedure, stand conferred then proceedings are to be conducted under the provisions of this Code, like any other Judicial Magistrate will do. When a Consumer Forum thus has the power of Judicial Magistrate after coming into force of the amended Section, it has to proceed with the trial of the offence as provided under the said Code.

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Sub-section (3) provides that offences may be tried summarily and that would mean as provided by the Code of Criminal Procedure."

The above clarification, issued by the National Commission, also has statutory force by virtue of Regulation 24 of the Consumer Protection Regulations, 2005. Section 30-A of the Consumer Protection Act, empowers the National Commission to issue Regulations to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. In exercise of the power so conferred under Section 30-A, the National Consumer Commission has issued, 'The Consumer Protection Regulations, 2005', with the previous approval of the Central Government. Regulation 24 of the said Regulations entitles the National Commission to issue practice directions from time to time for the proper conduct of the cases. The said Regulation 24 reads as follows:-

"24.Practice Directions.- The National Commission shall be entitled to issue practice directions from time to time as may be necessary for the proper conduct of the cases before Consumer Forum including prescribing forms for complaints, notices, returns, certificate to be issued to the collector and the like."

Therefore, the clarification issued by the National Consumer Commission about the scope of Section 27(2) of the Act may be construed as a practice direction issued under Regulation 24.

28. In view of the above, we are of the considered view that since the Parliament has conferred powers of Judicial Magistrates of First Class upon the District Forums, the State Commissions and National Commission constituted under Section 9 of the Consumer Protection Act, 1986, there is no necessity for these Forums and Commissions to await a Notification either from the State Government or from the High Courts, to enable them to exercise those powers of a Judicial Magistrate of First Class. Section 27(2) has not merely sanctioned a service connection, but also activated the same instantaneously with effect from 15.03.2003. Hence, the District Forums, State Commissions and the National Commission are entitled to exercise all the powers of the Judicial Magistrate of First Class under the Code and the apprehension of the petitioner (or of the Police department) that a Notification from the State Government is necessary, is not well founded. It is made clear that the Police is obliged to execute the warrants issued by the District Forums, State Commission and National Commission in the same manner as they execute warrants issued by competent Courts of Judicial Magistrates. These Forums would have the power to compel the police to act on the

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warrants issued and recalled and punishments imposed lawfully in exercise of the powers conferred under section 27(2) of the Act read with the Code of Criminal Procedure. Therefore, the writ petition is dismissed, however, with the above clarifications. No costs.
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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1.The Chief Secretary to Government,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

+ One cc to Mr. S.R. Rajagopal Advocate sR 66527
VRK (co)
sg 28/11/07

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